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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,045	12/11/2003	Don Tabor	03-12310	8987

25189 7590 05/04/2004  
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EXAMINER

SWIATEK, ROBERT P

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/734,045	Applicant(s) TABOR ET AL.	
	Examiner Robert P. Swiatek	Art Unit 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5-18 and 31-33 is/are allowed.
- 6) ☒ Claim(s) 3,4 and 19-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-11-03</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-23, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Mellinger (US 4,450,784). The Mellinger sailboat kite includes a flexible base portion 16, 72, an exposed substructure 74 in the form of a rod (see Figure 2 of Mellinger), and a sail 26. With respect to claim 23, substructure 74 of Mellinger is considered able to flex the base if element 74 is slightly bent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellinger in view of Renger et al. (US 4,655,720). The Mellinger kite, while having a sail, does not include a ballast *per se* coupled to it. It would have been obvious to one skilled in the art to employ a movable toy figure with the Mellinger kite, in view of the patent to Renger et al. that inclusion of a figure—construed to be ballast—allows adjustment of the flight characteristics of the kite (see elements 12, 13, 20 and column 5, lines 2-6, of Renger et al.).

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellinger in view of Renger et al. It would have been obvious to one skilled in the art to employ a movable toy figure with the Mellinger kite, in view of the patent to Renger et al. that inclusion of a figure—construed to be ballast—allows adjustment of the flight characteristics of the kite. As noted in column 5, lines 2-6, of Renger, the figure 13 acting as ballast can be moved along the extent of spine member 12 to alter the flight characteristics of the toy. Moreover, if the figure moved only a minute amount in the course of flying the kite, this minute movement would change the kite's flight dynamics.

Claims 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cassagnes (US 5,573,208: Ref. AD on Information Disclosure Citation). Rod 11 of Cassagnes is considered to constitute a partially exposed substructure that flexes right and left wings of sail 15 (see Figure 3 of Cassagnes).

Claims 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trevor (US 2,035,730: Ref. on sheet 2 of Information Disclosure Citation). Elements 20, 22, 26, 30 of Trevor constitute elements of a partially exposed substructure. However, the Trevor kite depicts only two wheels 31. It would have been obvious to one skilled in the art to include a third, rear wheel under the tail portion of the Trevor kite so that it wasn't a tail-dragger, in order to minimize damage to the kite if it were pulled across the ground.

Claims 3, 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In claim 3, line 2, "said one or more said masts" lacks a prior antecedent basis.


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Claims 3, 4 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The abstract of the disclosure is objected to because in line 1, "Provided is a" should be changed to -A-. Correction is required. See MPEP § 608.01(b).

The patents to Doyle (US 606,960), Kellogg (US 1,927,835), and Battles (US 3,920,201) have been cited to provide additional examples of kites.

RPS: J703/308-2700  
30 April 2004

  
ROBERT P. SWIATEK  
PRIMARY EXAMINER  
ART UNIT ~~333~~ 3643